

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**RECEIVED**

MAR - 5 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
**Mobile Relay Associates** )  
(holder of 75 Title III authorizations) )  
)  
**Mobile Relay Associates, Inc.** )  
(holder of 69 Title III authorizations) )  
)  
**Mark J. Abrams** )  
(holder of 3 Title III authorizations) )  
)

(See Attachment A to Initial Petition)

To: Chief, Enforcement Bureau

**SUPPLEMENT TO PETITION  
FOR ENFORCEMENT ACTION**

James A. Kay, Jr. ("Kay"), by his attorney, hereby supplements the *Petition for Enforcement Action* ("Petition"), tendered in the above-captioned matter on December 4, 2001, in support the following is respectfully shown:

1. Kay previously explained that in October of 1993 he had purchased from Motorola the community repeater and the customer accounts pursuant to which Fischbeck Construction, Inc. ("Fischbeck"), had theretofore been operating on the base station frequency 471.6625 MHz at Sierra Peak. *Petition* at ¶ 9. Attachment No. 11<sup>1</sup> hereto is a copy of a letter from Motorola to Fischbeck evidencing this event. Kay has supplied similar letters with respect to the other cases discussed in the *Petition*, but had not located a copy of the letter to Fischbeck at the time of filing.

<sup>1</sup> In order to avoid any confusion between exhibits, Kay is continuing the attachment numbering sequence started in the *Petition*. The last attachment to the *Petition* was designated as number 10, so the first attachment to this supplement is being designated number 11.

**STAMP & RETURN**

2. Attachment No. 12 hereto is a copy of a letter dated December 13, 2001, from Wilkie Cheong, Esquire, to Mr. Mark Abrams ("Abrams"). The letter expresses an opinion on the potential legal liability to Kay arising from events related to the assignment of the license for Station WIJ226 from El Redondo Termite Control, Inc. ("El Redondo Termite") to Mobile Relay Associates. The legal opinion is based on certain underlying factual assumptions that are recited in the letter, and these clearly are facts that were provided to Attorney Cheong by Abrams. Among other factual matters, the Cheong letter states that on August 29, 1995, El Redondo Termite entered into an agreement with Kay for repeater services entirely unrelated to any facilities licensed to anyone on 508.0625 MHz.

3. Kay does not ask the Commission to become involved in the potential civil legal matters between these parties. This letter is called to the Commission's attention, however, because it provides conclusive evidence that Abrams acted with full knowledge when he misrepresented the status of Station WIJ226 to the Commission. By his own account of the facts as relayed to his own legal counsel, Abrams acknowledges that El Redondo Termite had, as early as August of 1996, "entered into a subsequent Repeater Agreement [with Kay] whereby [it] was switched to [Kay's] trunking system for better service, using frequencies and licenses, also owned by [Kay], that were completely different than those that were previously under contract." Thus, even accepting this only partially accurate understanding of the facts, Abrams admits that he was aware that El Redondo Termite had stopped using the 508.0625 MHz facilities of Station WIJ226 as early as August of 1996.<sup>2</sup> Yet, in August of 2001, some five years later, Abrams

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<sup>2</sup> In fact, such operation had ceased much earlier. As Kay previously explained, upon the purchase of the community repeater and the customer contract from Motorola, Kay contracted to provide El Redondo Termite with service on 508.0625 MHz via Kay's own private carrier station (WIK375), at which point all operations on El Redondo Termite's license (WIJ226) was terminated and the facilities were removed from the site location. Petition at ¶ 5. El Redondo Termite later contracted with Kay for LTR "trunked" service on an entirely different frequency, Id. at ¶ 5, n.4, but even prior to that time the all operations on WIJ226 had permanently discontinued.

submitted an assignment application for Station WIJ226 to the Commission in which he affirmatively represented that station was fully constructed and operational. This was blatantly contrary to what Abrams knew to be the truth.

WHEREFORE, it is requested that for all the reasons previously stated in the *Petition for Enforcement Action*, and as further supplemented hereby, the Commission initiate a complete and thorough investigation into this matter; that the Commission designate for hearing all pending applications to which Abrams, MRA-P, or MRA-C is party on the issue of whether these entities are guilty of disqualifying misrepresentation, lack of candor, and abuse of process; that the Commission initiate license revocation proceedings on the same grounds with respect to any authorization to in which Abrams, MRA-P, or MRA-C holds an interest; and that Kay be made a party to any such proceedings.

Respectfully submitted on March 5, 2002,

**JAMES A. KAY, JR.**

By: 

Telephone: 202-223-2100  
Facsimile: 202-223-2121  
Email: rjk@telcomlaw.com

Robert J. Keller, His Attorney  
Law Office of Robert J. Keller, P.C.  
P.O. Box 33428 – Farragut Station  
Washington, D.C. 20033-3428

Certificate of Service

I, Robert J. Keller, certify that on the date indicated above I caused a copy of this pleading to be sent by First Class USPS, postage prepaid, to:

Mr. Mark J. Abrams  
15330 Vermont Avenue  
PO Box 19  
Paramount, California 90723



Robert J. Keller

**ATTACHMENT No. 11**

**ATTACHMENT No. 11**

**MOTOROLA**

**Communications and Electronics Inc.  
Western Division  
North America Group**

October 18, 1993

Fischbeck Construction, Inc.  
1901 E. Center St.  
Anaheim, CA 92805

Dear Motorola Customer:

Motorola has made arrangements to sell our Community Repeater that your company shares on SIERRA PEAK. The repeater will remain at the same location and be owned and maintained locally by:

LUCKY'S TWO WAY RADIO  
P. O. BOX 7890  
Van Nuys, CA. 91409  
Tel. No. 818-997-7700

Effective December 1, 1993, Lucky's Two Way Radio will be billing you for your repeater service. Any pre-paid repeater service will be credited to your Motorola account. Please call Motorola's Customer Service Center at (800) 247-2346 to request a refund.

Thank you for allowing Motorola to provide your communications needs. If you have any questions, please feel free to call me at 800-445-3620 ext. 8359.

Regards,

A handwritten signature in dark ink, appearing to read 'Al Pittard'.

Al Pittard  
Antenna Site Manager  
Network Services Western Division

cc: Lucky's Two Way Radio

OFFICIAL SUPPLIER  
OF THE 1996  
U.S. OLYMPIC TEAM



**ATTACHMENT No. 12**

**ATTACHMENT No. 12**

562-400 1592 MOBILE RELAY ASSOC

359 PM DEC 17 '01 12:34

## CHEONG, DRESOWE, ROWELL, ANTABLIN &amp; BENNETT

A PROFESSIONAL CORPORATION

SANTA MONICA, CALIFORNIA 90405

PHONE 310-311-2600

603 ANTHELM, CALIFORNIA 90401

FAX 310-311-2600

TELECOPIER  
(310) 277-6254CHEONG & DRESOWE  
A PROFESSIONAL CORPORATION  
WILLIAM CHEONG  
JAMES D. DRESOWE  
ANTHONY ANTABLIN  
MARY W. BENNETTDOUGLAS B. ROWELL  
A PROFESSIONAL CORPORATIONMARY L. WAGNER  
ALICIA S. GIBBON

December 13, 2001

Mr. Mark Abrams  
Mobile Relay Associates  
15330 Vermont Avenue  
Paramount, California 90723

Re: Lucky's/El Redondo Termite Repeater Agreements

Dear Mr. Abrams:

You have requested my opinion as to the extent of the liability of El Redondo Termite, if any, under the Repeater Agreements it entered into with Lucky's Two-Way Radios with respect to its assignment of FCC License No. WIJ226 to Mobile Relay Associates. My understanding of the pertinent underlying facts are as follows:

On December 8, 1993, El Redondo Termite ("ERT") entered into a written Repeater Agreement with Lucky's Two Way Radios ("Lucky") relative to the operation of a radio system with "500 MHz service", using frequencies and licenses owned by Lucky. At that time, ERT was the licensee for channel WIJ226, also for use on the 500 MHz band. The Repeater Agreement contained a handwritten provision requiring ERT to "cancel FCC license WIJ226 on FCC Form 405A, to be executed upon execution of this contract." ERT never did take any steps to cancel license WIJ226, nor did Lucky subsequently ever demand that ERT do so.

On August 29, 1996, Lucky and ERT entered into a subsequent Repeater Agreement whereby ERT was switched to Lucky's trunking system for better service, using frequencies and licenses, also owned by Lucky, that were completely different than those that were used under the previous contract. The subsequent agreement does not contain any provision requiring ERT to cancel any FCC license, but rather provides that "This agreement supersedes [the] previous agreement signed 12/8/93." In August of 1999, the contract was automatically renewed for an additional three years.

Subsequently, while the 1996 agreement with Lucky was still in effect, ERT entered into a Repeater Agreement with Mobile Relay Associates ("MRA") and switched the operation of its radios over to MRA's system. ERT also assigned its license for channel WIJ226 over to MRA. ERT intends to maintain the monthly payments to Lucky until the 1996 agreement expires in August of 2002.

562-408-1892 MOBILE RELAY ASSOC

399 P03 DEC 17 '01 12:34

Mr. Mark Abrams  
Mobile Relay Associates  
December 13, 2001  
Page 2

ERT just recently received a letter from counsel for Lucky, claiming that ERT's assignment of license WIJ226 to MRA constituted material breaches of paragraphs 7 and 18 of the 1996 Repeater Agreement. However, unlike the previous Repeater Agreement entered into in 1993, which agreement was specifically superseded by the 1996 agreement, there is no separate provision in the latter contract requiring ERT to cancel license WIJ226. Moreover, paragraph 7 merely requires the customer, ERT, to be properly licensed for operation on Lucky's repeater system; since ERT was operating the system on separate frequencies licensed to Lucky, that provision has no applicability at all with respect to license WIJ226. Similarly, paragraph 18 merely requires, upon termination of the service, for the customer to assign back to Lucky the license that was used for the service being provided under the contract; again, since ERT was operating on frequencies already licensed to Lucky, this provision likewise has no applicability with respect to license WIJ226.

Finally, it appears that ERT may indeed have breached its obligation under the 1993 Repeater Agreement to cancel license WIJ226 upon execution of the contract. However, any such breach would have occurred back when the Repeater Agreement was first signed, in December of 1993. The statute of limitations to enforce a written contract, or to sue to recover damages arising from a breach of contract, is four years from the date of the alleged breach. This four-year time period has long since expired. Accordingly, at this point in time it appears clear that Lucky is time-barred from asserting any claim based upon ERT's alleged breach of any provision contained in the 1993 Repeater Agreement, including the provision requiring ERT to cancel FCC license WIJ226.

In conclusion, for the reasons stated above, it is my opinion that under either the 1993 or the 1996 Repeater Agreements, ERT has no liability to Lucky arising out of ERT's assignment of FCC license WIJ226 over to MRA.

Please let me know if you have any questions or comments concerning the foregoing.

Very truly yours,

CHRONO, GENEVE, ROWELL,  
ANTHONY & BENNETT

Wilkie Cheong



**ATTACHMENT No. 6**

**ATTACHMENT No. 6**

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**RECEIVED**

**APR 24 2002**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

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**Mobile Relay Associates, Inc.** )  
(holder of 69 Title III authorizations) )  
)  
**Mark J. Abrams** )  
(holder of 3 Title III authorizations) )  
)

(See Attachment A to Initial Petition)

To: Chief, Enforcement Bureau

**SECOND SUPPLEMENT TO  
PETITION FOR ENFORCEMENT ACTION**

James A. Kay, Jr. ("Kay"), by his attorney, hereby further supplements the *Petition for Enforcement Action* ("Petition"), tendered in the above-captioned matter, in support the following is respectfully shown:

1. In his *Petition*, filed on December 4, 2001, Kay demonstrated that Mark J. Abrams ("Abrams") and Mobile Relay Associates and Mobile Relay Associates, Inc. (collectively, "Mobile Relay") have engaged in conduct that calls into serious question their continued basic qualifications to remain Commission licensees. Specifically, Abrams and Mobile Relay have filed numerous applications pursuant to Section 310(d) of the Communications Act, seeking Commission consent to the assignment of certain licenses to Mobile Relay. In many instances, the licenses for which such assignments were sought were no longer valid, having automatically expired due to permanent discontinuance of operations. Insofar as Abrams knew or should have known the status of the licenses for which assignment was sought, it appears that Abrams and Mobile Relay have lacked candor with and made misrepresentations to the Commission and have also engaged in abuse of process.

**STAMP & RETURN**

2. In his *Supplement to Petition for Enforcement Action*, filed on March 5, 2002, Kay produced further documentation and support for his allegations, including a copy of correspondence between Abrams and his legal counsel demonstrating that Abrams was fully aware of the defunct status of the licenses when he applied to take assignment of them.

3. This *Second Supplement to Petition for Enforcement Action* is being submitted to call to the Commission's attention further relevant misconduct by Abrams and Mobile Relay. Attachment No. 13 hereto<sup>1</sup> is a copy of a pleading, styled as a *Request for Revocation* filed by Mobile Relay on or about April 5, 2002, seeking the revocation of Station WPPH675, licensed to MWS Communications, LLC ("MWSC"). Mobile Relay claims party status to challenge the MWSC license by virtue of its holding authorizations under Call Signs WSD94 and WIJ226 for adjacent channel operations only 12.5 kHz removed from those specified in the authorization for Call Sign WPHH675. It will be noted that both WSD94 and WIJ226 are among the specific facilities noted in Kay's *Petition* as having been fraudulently obtained by Mobile Relay.

4. Kay conclusively demonstrated in his *Petition* that the license for Station WIJ226 had already expired by operation of law years before Mobile Relay submitted an application for consent to take assignment of the authorization, and that Mobile Relay knew or should have known of this. *Petition* at ¶¶ 5-7. Kay made a similar factual showing as to (WII644 and WII622). *Id.* at ¶¶ 6-16. Kay thus made out a prima facie case that Abrams and Mobile Relay were guilty of misrepresentation and lack of candor, *id.* at ¶¶ 17-22, and abuse of process *id.* at ¶¶ 23-26.

5. While Kay was able to offer factual support as to only three specific stations, he further asserted on information and belief that the same scenario was involved in the case of several other stations for which Abrams and Mobile Relay had recently taken assignment,

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<sup>1</sup> To avoid any confusion between exhibits, Kay continues the attachment numbering sequence used in the previous pleadings. The last attachment to the *Supplement* was designated as number 12, so the first attachment to this supplement is being designated number 13.

including Station WSD94, the subject of Mobile Relay's recent petition directed at MWSC.

Attachment No. 14 hereto is a copy of the *Opposition of MWS Communications, LLC to Request for Revocation Filed by Mobile Relay Associates* ("MWSC Opposition").<sup>2</sup> From review of that pleading the Commission will note that the same factual pattern of misrepresentation and abuse of process has been documented as to Station WSD94. Specifically, as with the three instances previously documented by Kay, Abrams and Mobile Relay knew or should have known that the authorization WSD94 was no longer valid when they sought assignment of it.

6. In advancing its protest, Mobile Relay unabashedly claims that all of the subject frequencies (i.e., including the frequencies authorized under Call Signs WSD94 and WIJ226) "were already fully loaded by [Mobile Relay's] predecessors ... at the time MWSC's predecessor filed its application for the WPPH675 license." Attachment 13 at p. 2. This is a blatant misrepresentation. Mobile Relay knows full well that the authorizations for WSD94 and WIJ226 terminated and expired years ago. It is almost impossible that Mobile Relay did not know this at the time it sought assignment of the authorizations, but it certainly knew it upon being served with Kay's December 4, 2001, *Petition*. The *Request for Revocation* therefore constitutes an intentionally false statement by Mobile Relay to the Commission in order to influence the Commission's execution of its licensing and regulatory functions.

7. The gravamen of Mobile Relay's protest is that its so-called predecessors (i.e., the assignees of Stations WSD94 and WIJ226) were entitled to protection against the encroachment that allegedly occurred with the licensing of Station WPPH6765. In short, Mobile Relay is attempting to claim for itself the benefit of authorizations it knows to be invalid. This misconduct goes beyond misrepresentation and lack of candor, for speculating in, acquiring, or claiming

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<sup>2</sup> Kay has omitted from the attachment Exhibits C and D of the *MWSC Opposition* which are copies of Kay's *Petition* and *Supplement*, respectively, in the above-captioned matter.

benefit from expired or invalid licenses is an abuse of process. See *Daniel R. Goodman*, 10 FCC Rcd 8537, 8546-8548 (1995) & 13 FCC Rcd 21944, 21956 & 21970 (1998).

8. Kay also calls the Commission's specific attention to page 8 of the *MWSC Opposition*, where it is explained that the small number of units available on the assigned licenses, in an environment in which the channels are already fully utilized by other licensees, calls Mobile Relay's motives into further question. Kay concurs in the assessment set forth in the *MWSC Opposition* that the only rational explanation for such conduct is either to further a strategy of "greenmail" against the licensees of valid authorizations and against Nextel, whom Mobile Relay knows to have a keen interest in these channels. This would make the *Mobile Relay* assignment filings "strike applications," and yet another instance of abuse of commission process. *Evansville Skywave, Inc.*, 7 FCC Rcd 1699, 1700 (1992) ("abuse of process includes other forms of misconduct, such as filing strike applications"); *Asheboro Broadcasting Co.*, 20 FCC 2d 1 (1969); *Al-Or Broadcasting Co.*, 3 R.R. 2d 889 (Rev. Bd. 1964)(an application motivated by other than a genuine desire to construct and operate the specified facilities constitutes an abuse of process).

WHEREFORE, it is requested that for all the reasons previously stated in the *Petition for Enforcement Action*, the *Supplement to Petition for Enforcement Action*, and as further supplemented hereby, the Commission initiate a complete and thorough investigation into this matter; that the Commission designate for hearing all pending applications to which Abrams, Mobile Relay Associations, or Mobile Relay Associates, Inc. is party on the issue of whether these entities are guilty of disqualifying misrepresentation, lack of candor, and abuse of process; that the Commission initiate license revocation proceedings on the same grounds with respect to any authorization to in which Abrams, Mobile Relay Associations, or Mobile Relay Associates, Inc. holds an interest; and that Kay be made a party to any such proceedings.

Respectfully submitted on April 23, 2002,

JAMES A. KAY, JR.

By: 

Telephone: 202-223-2100  
Facsimile: 202-223-2121  
Email: [rjk@telcomlaw.com](mailto:rjk@telcomlaw.com)

Robert J. Keller, His Attorney  
Law Office of Robert J. Keller, P.C.  
P.O. Box 33428 – Farragut Station  
Washington, D.C. 20033-3428

Certificate of Service

I, Robert J. Keller, certify that on the date indicated above I caused a copy of this pleading to be sent by First Class USPS, postage prepaid, to:

Mr. Mark J. Abrams  
15330 Vermont Avenue  
PO Box 19  
Paramount, California 90723

David J. Kaufman, Esquire  
Brown Nietert & Kaufman, Chartered  
2000 L Street, N.W. – Suite 817  
Washington, D.C. 20036



Robert J. Keller

**ATTACHMENT No. 13**

**ATTACHMENT No. 13**

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

In the Matter of )  
 )  
**MWS COMMUNICATIONS LLC** )  
 )  
 Authorization for Private Land Mobile Radio )  
 Facilities, Call Sign WPPH675, Los Angeles )  
 County, CA )

To: Chief, Wireless Telecommunications Bureau

**REQUEST FOR REVOCATION**

Mobile Relay Associates ("MRA") hereby seeks revocation of the above-captioned license issued to MWS Communications LLC ("MWSC"). MRA holds licenses under call signs WSD94 and WIJ226 which are co-channelled with the captioned license. MRA obtained assignments of its two licenses in August of 2001. MRA's facilities operate within the same geographic areas in Los Angeles County, CA as the captioned facility. Several of the frequencies allocated to the captioned license are 12.5 kHz removed from the frequencies allocated to MRA's two licenses, and to the licenses of several other licensees whose facilities are also located within the same geographic areas in Los Angeles County, CA.<sup>1/</sup> See attached Exhibit A.

It was error for the frequency coordinator, AAA, to certify the underlying application for the WPPH675 license to the Commission, and error for the Commission to grant same.<sup>2/</sup> The underlying

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<sup>1/</sup> As the Commission knows, the Commission names a frequency by its center-point for convenience, but that frequency extends on both sides of the center-point. Because MWSC's frequencies are only 12.5 kHz removed from those of MRA and the other licensees, and MWSC's facilities are located within in such close vicinity to the facilities of MRA and the other licensees, there is significant overlap of the frequencies such that MWSC can be deemed to be co-channelled to MRA and the other licensees. (See, e.g., August 28, 2001 Return Notices issued in FCC File Nos. D145217, D145218 and D145219.)

<sup>2/</sup> According to the Commission's public database, the initial application for the WPPH675 license was issued in January, 2000. The license was modified in October, 2000.



application did not comply with the requirements of §90.313 of the Commission's rules, 47 C.F.R. §90.313, and therefore was defective and should have been denied. The frequencies specified in the application are shared frequencies subject to a maximum channel loading of 90 units per frequencies under §90.313(a)(2).<sup>37</sup> All of the frequencies were already fully loaded by MRA's predecessors and the other licensees listed in Exhibit A, at the time that MWSC's predecessor filed its application for the WPPH675 license.<sup>38</sup> Therefore, under §90.313(b), MWSC's predecessor was obligated to obtain signed statements from MRA's predecessors and the other co-channel licensees consenting to the increase in the frequency loading engendered by the underlying application for the captioned license. MWSC's predecessor failed to request, much less obtain, such consent from MRA's predecessors. Thus, the application for the WPPH675 license was defective as filed and should have been denied.<sup>39</sup>

The Commission has delegated to certified frequency coordinators the task of determining whether a proposal would cause harmful interference to protected licensees and of ensuring that all technical rules, such as §90.313, are complied with prior to filing of the application with the FCC.<sup>40</sup> Although a frequency coordinator is in one sense an agent for the applicant (it is paid by the applicant, and, within the constraints of FCC rules, it seeks to find the best frequency for the applicant, or to

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<sup>37</sup> Section 90.313 does not permit any additional licensees on such fully loaded channels.

<sup>38</sup> MWSC took assignment of the WPPH675 license in March of 2001.

<sup>39</sup> Additionally, AAA has admitted on several occasions (*see, e.g.*, file nos. D145217, D145218, and D145219) that when coordinating applications for off-set channels, it does *not* comply with the TIA 8.8 standard for determining adjacent channel interference protection. Thus, by its own admission, AAA violates §90.187 of the Commission's rules when coordinating applications for off-set channels. While not specifying the TIA 8.8 standard, §90.187 does require that all interference analyses pursuant to this rule section be performed using "generally accepted engineering practices," which the rule defines as "practices and standards agreed to by a consensus of all certified frequency coordinators." *See* 47 C.F.R. §90.187(a)(2)(iv). A consensus of certified frequency coordinators and the LMCC agreed to use the TIA 8.8 standard for all adjacent channel interference analyses.

<sup>40</sup> *See Frequency Coordination in the Land Mobile Radio Services*, 103 FCC 2d 1093 at ¶20, 60 RR 2d 41, 48 (1986) ("Frequency Coordination")

justify the applicant's proposal), the frequency coordinator is also the agent of the Commission, since, under §332(b) of the Act, it is assisting the Commission in ensuring that applications meet all FCC interference protection rules before they are filed. In the case of the captioned license, AAA, a Commission-certified frequency coordinator, falsely certified to the Commission that the underlying application protected all incumbent co-channel licensees from harmful interference and that the application complied with the other technical rules applicable to the requested frequency, including the requirement in §90.313 that MWSC's predecessor obtain signed statements from all pre-existing co-channel licensees before filing.

MRA's predecessors held licenses for frequencies where, under §90.313 of the Commission's Rules, no person could lawfully obtain a co-channel license without first coming to them and obtaining from them a written consent to the new license — a consent that MRA's predecessors were under no obligation to provide. MRA's predecessors had a right to rely upon §90.313, and upon the Commission's frequency coordinator system, whereby a Commission-certified frequency coordinator would act as the Commission's agent and assistant and prevent any defective application that violated §90.313 from ever being filed. The mechanism broke down in this case because AAA falsely certified that the application filed by MWSC's predecessor complied with §90.313 when it did not. In performing this gatekeeper type of service, AAA is the Commission's agent, and AAA's wrongdoing is attributable to the Commission. AAA is the Commission's statutorily created assistant, performing a task that otherwise is performed by the Commission itself. See 47 U.S.C. §332(b). Thus, the Commission itself had a duty not to accept the application for filing unless it complied with §90.313.

MWSC's predecessor and AAA each perpetrated a fraud upon this Commission by falsely certifying that the application for the captioned license complied with all Commission technical rules, including §90.313. That false certification goes to the heart of the integrity of the Commission's

processes, and the Commission has the inherent power to correct that fraud.<sup>27</sup> Under *Hazel, Alberta* and *Jacksonville, supra*, the Commission retains jurisdiction to do so, notwithstanding the ostensible "finality" of any grant which MWSC's predecessor fraudulently obtained by falsely certifying that its application complied with §90.313 of the Rules.

Therefore, in consideration of the foregoing, MRA respectfully requests that the Commission revoke the license under call sign WPPH675.

The undersigned hereby declares under penalty of perjury that all facts set forth herein and not otherwise subject to official notice are true and correct to the best of his knowledge, information and belief.

Respectfully submitted,

**MOBILE RELAY ASSOCIATES**

April 5, 2002

By: Mark J. Abrams

Mark J. Abrams, Partner  
15330 Vermont Avenue  
Paramount, CA 90723  
(323) 636-5202

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<sup>27</sup> See *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 60 S.Ct. 997 (1944) ("*Hazel*") (reversing a final decision nine years later after learning the original decision was obtained via fraud upon the court); *Alberta Gas Chemicals, Ltd. v. Celanese Corp.*, 650 F.2d 9 (DC Cir. 1981) ("*Alberta*") (holding that federal administrative agencies, like courts, have the power to re-open final orders obtained via fraud); *City of Jacksonville*, 35 FCC 411 (ALJ, 1962) ("*Jacksonville*").

Exhibit A

No.	Call Sign or File Number	Frequency	Miles	Channel	Power	Location	Interference to Category	Applicant
1	WPPH-675	607.8000	507.1675	0.01250	NAWS	WVJ 1616	WVJ 1616	NAWS Communications
2	WPPH-675	607.8000	607.8125	-0.01250	NAWS, El Pueblo Del Los Angeles	WVJ 1616, WVJ 1617	WVJ 1616, WVJ 1617	NAWS Communications
3	WPPH-675	607.8250	607.8375	0.01250	NAWS, El Pueblo Del Los Angeles	WVJ 1616, WVJ 1617	WVJ 1616, WVJ 1617	NAWS Communications
4	WPPH-675	607.8250	607.8375	-0.01250	NAWS, James Key	WVJ 1616, WVJ 1617	WVJ 1616, WVJ 1617	NAWS Communications
5	WPPH-675	607.8250	607.8125	0.01250	NAWS, US Marine, NARA	WVJ 1616, WVJ 1617	WVJ 1616, WVJ 1617	NAWS Communications
6	WPPH-675	607.8250	607.8375	-0.01250	NAWS, James Key, Frank Garcia	WVJ 1616, WVJ 1617	WVJ 1616, WVJ 1617	NAWS Communications
7	WPPH-675	607.8500	607.8625	0.01250	NAWS, James Key, Frank Garcia	WVJ 1616, WVJ 1617	WVJ 1616, WVJ 1617	NAWS Communications
8	WPPH-675	607.8500	607.8625	-0.01250	NAWS	WVJ 1616	WVJ 1616	NAWS Communications
9	WPPH-675	608.0500	608.0625	0.01250	NAWS	WVJ 1616	WVJ 1616	NAWS Communications
10	WPPH-675	608.0500	608.0625	-0.01250	James Key, NAWS, Garcia, NARA	WVJ 1616, WVJ 1617, WVJ 1618	WVJ 1616, WVJ 1617, WVJ 1618	NAWS Communications

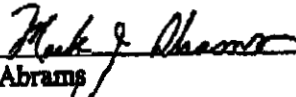
**CERTIFICATE OF SERVICE**

I, Mark J. Abrams, a partner of Mobile Relay Associates, hereby certify that I have caused a copy of the foregoing "REQUEST FOR REVOCATION" to be sent by first class mail, postage prepaid, this 5<sup>th</sup> day of April, 2002, to each of the following:

- \* Thomas J. Sugrue, Bureau Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 3-C252  
Washington, D.C. 20554
- \* Barry J. Ohlson, Acting Chief  
Public Safety & Private Wireless Division  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, 4<sup>th</sup> Floor  
Washington, D.C. 20554

MWS Communications, LLC  
11892 Cardinal Circle  
Garden Grove, CA 92843

Nextel of California, Inc.  
% Nextel Communications, Inc.  
2001 Edmund Halley Drive  
Reston, VA 20191

  
Mark J. Abrams

\*Via Hand Delivery

TOTAL P.06

TOTAL P.06

**ATTACHMENT No. 14**

**ATTACHMENT No. 14**

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
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**MWS COMMUNICATIONS, LLC** )  
 )  
Authorization for Private Land Mobile )  
Facilities, Call Sign WPPH675 in Los )  
Angeles, County, CA )

To: Chief, Wireless Telecommunications Bureau

**OPPOSITION OF MWS COMMUNICATIONS, LLC TO REQUEST  
FOR REVOCATION FILED BY MOBILE RELAY ASSOCIATES**

**SUMMARY OF ARGUMENT**

The Mobile Relay Associates' ("MRA") document which is styled as a "Request for Revocation" is untimely, if it is considered to be an informal objection to a granted license. In any event, it is an unauthorized pleading under Commission Rules. Therefore, it may be considered as nothing more than a generalized complaint, even though it is in the style of a pleading.<sup>1</sup> MRA has offered no proof regarding any of its allegations of fraud. MRA lacks standing to complain, as its licenses which are the basis of its complaint, were canceled automatically, by operation of law, approximately seven years ago, when MRA's assignees permanently discontinued their stations' operations. This occurred years before the licenses were purportedly "assigned" to MRA. MRA does not represent any other potential objecting party. MRA had actual knowledge that it had acquired void licenses. MRA's Request for Revocation is a frivolous pleading, having been filed for no purpose other than to harm a competitor, and constitutes an abuse of the process of the Commission, and shows lack of candor. Contrary to its claims, MRA is not actually a co-channel licensee on any of the channels on MWS's license.

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<sup>1</sup> 47 CFR Section 1.41

We ask that the Commission deny the requested relief, and instead launch an investigation of the conduct of MRA, and its partner Mark Abrams, in filing its frivolous pleading, as an abuse of process, lack of candor and misrepresentation before the Commission, calling into question their fitness to continue to hold Commission licenses.

**I. MOBILE RELAY ASSOCIATES' ("MRA") REQUEST FOR  
REVOCATION IS UNTIMELY FILED, AND SHOULD BE DENIED.**

The license of MWS Communications, LLC ("MWS") which is the subject of MRA's pleading, was assigned to MWS in March 2001. This admission is made in MRA's Request for Revocation, which was filed April 5, 2002. MRA is therefore aware that its pleading is untimely, if it is considered to be an informal objection to a granted license. Under the Commission's Rules, MWS's license became incontestable 30 days from the grant date. In other words, MRA is about one year late in seeking to object to this license. MRA has pointed to no facts or circumstances which could possibly excuse a failure to comply with the "Petition to Deny" filing deadlines of the Commission's Rules.<sup>2</sup>

In fact, the nature of the matters alleged in MRA's "Petition for Revocation", such as improper coordination, and a difference of opinion over whether there might be harmful interference, if the licenses were granted, are garden variety allegations which should have been made in the application period, and no later than the 30 day objection period after grant. The allegations of fraud raise the same issues, only with an epithet of "fraud" appended, and they are devoid any recitation of facts which would demonstrate, or even suggest fraud.

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<sup>2</sup> MRA recognizes its fatal problem on this issue, and seeks to assert that the 30 day deadline does not apply due to "fraud". However, as is shown, *infra*, there are no factual allegations of fraud, and no competent evidence of same. See, Fed. Rules Evidence Sections 700 *et seq.* None of the cases cited by MRA, even stand for the propositions for which they are cited. There is no allegation of fraud, as set forth in *Hazel-Atlas Glass v. Hartford Empire*, 322 U.S.238, 60 S.Ct 997 (1944); totally distinguishable on its facts, nor *Alberta Gas Chemicals v. Celanese Corp.*, 650 F2d 9 (DC Cir. 1981); completely irrelevant, nor *City of Jacksonville*, 35 FCC 411 (ALJ 1962); also not germane to the discussion at hand.



We note that there is no actual evidence attached to MRA's papers. For example, there are no declarations under oath regarding any of the facts or circumstances surrounding the subject of MRA's complaint. In particular, there is no declaration or other evidence that any of MRA's predecessors had, or have any claims regarding fraud.<sup>3</sup> All that appears regarding fraud is a generalized statement, consisting of supposition and speculation, regarding work performed by the AAA coordinator in other matters before the Commission. There is no declaration nor engineering study suggesting any finding of fraud. Hence, the allegations regarding fraud must be ignored, as factually devoid of proof. None of the cases cited by MRA regarding opening matters up for fraud, are even remotely applicable.<sup>4</sup>

**II. MRA'S "REQUEST FOR REVOCATION" IS NOT A PLEADING AUTHORIZED BY THE COMMISSION'S RULES. REVOCATION PROCEEDINGS CAN ONLY BE BROUGHT WITH A HEARING DESIGNATION ORDER ("HDO") BY THE COMMISSION.**

MWS has searched the Rules of the Commission and found no pleading entitled "Request for Revocation".<sup>5</sup> Accordingly, there is not even a requirement that we respond to MRA'S document. However, this "Opposition" is being submitted to demonstrate to the Commission that the charges against this licensee are false and ill founded. It is also being filed because, MRA's so-called "Request for Revocation" while

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<sup>3</sup> See previous footnote, *supra*, for case citations and analysis. Also, All of the alleged fraud could only have occurred to the assignors of MRA. MRA, has on its face produced no competent evidence from its own knowledge.

<sup>4</sup> The pleading of MRA is sworn, but there are no substantive facts alleged that demonstrate fraud. All that is alleged is that AAA did a poor job in performing coordination. There are no facts which show any wilful intention to deceive, nor any allegations that MRA's predecessors were harmed or had any objections to the coordination. Such facts would be hard to show, particularly since operation of MRA's assignors' stations had been permanently discontinued for six or seven years previously, and their stations had licenses automatically canceled.

<sup>5</sup> In Subsection 1, dealing with the Commission procedural rules, there is no such pleading as a "Petition for Revocation". There are "Petitions to Deny", "Petitions for Reconsideration", "Petitions for Review", but no such legal creature as a "Petition for Revocation."

not part of any proceeding based in the Commission's Rules, still might be construed by the Commission as a generalized complaint against MWS, and MWS does not want to leave any allegations by MRA unrebutted.

Because it is an unauthorized pleading, *a fortiori*, MRA'S Request for Revocation cannot begin a pleading cycle. If the Commission wished to revoke MWS's license, the Commission would be required under the Rules to issue a Hearing Designation Order, ("HDO") specifying the precise legal grounds for revocation of a license. There being no HDO issued, MWS Communications, LLC is not presently in any kind of proceeding before the Commission which puts its license in jeopardy.

### **III. MRA HAS NO STANDING TO OBJECT TO MWS COMMUNICATIONS' LICENSE, SO ITS REQUEST FOR REVOCATION SHOULD BE DENIED.**

**A. MRA, by its own admission, bought WSD94 and WIJ226, the stations allegedly injured, in August 2001, many months after the time to object to the assignment of MWS Communications' licenses had passed.**

As shall be seen, MRA bought licenses with actual knowledge of the prior rights of MWS, and with actual knowledge (from the FCC Database) that the time to object to MWS's license had long since expired. Therefore, MRA cannot claim that it was "defrauded" in any manner, and therefore, has no standing to raise any objections with respect to MWS license, regarding fraud, or any other matter. It has submitted nothing from its predecessors in interest alleging that they had complained of any fraudulent treatment, or had objections about interference, or that they had or would have had any objection to any action taken by MWS Communications or its predecessors. As an assignee, MRA has no better rights to object than could MRA's predecessors. As shall be seen below, it appears that the only fraud involved in this case is that committed by MRA in connection with the filing of this frivolous Petition for Revocation, and its fraudulent taking by assignment of void licenses.

**B. The licenses which MRA bought, WSD94 and WIJ226, which provide the basis for its complaint had been canceled by law for about seven years before this Request for Revocation was filed, due to permanent discontinuance of operation.**

Commission Rule 90.157 provides that the license of a station which discontinues operation automatically cancels. This does not require Commission action.<sup>6</sup> The license for a station which is off the air for more than one year, automatically cancels, and becomes void, and it must be returned to the Commission.<sup>7</sup> The following are the particulars which demonstrate that MRA is trying to protect void licenses, which do not have any right to operate. Thus, the misuse of these dead licenses show the frivolousness of the Request for Revocation.

**1. WSD94 -- This station permanently discontinued operations in 1994, and was automatically canceled by law at that time.**

The Declaration of Charles Wells establishes these facts: With respect to WSD94, the original license holder, J. Schwartzman, & Supply, dba JS Screw Mfg, in October 1993, was a customer of Motorola on a community repeater. Mobile Radio Service, Inc. purchased that community repeater, and the customer account. **In 1994, Mobile Radio Services, Inc. shut down the community repeater.**<sup>8</sup> **J. Schwartzman & Supply was placed on the private carrier licensed to Mobile UHF, Inc. Mobile UHF, Inc. programmed its private carrier repeater to accept the J. Schwartzman & Supply mobile**

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<sup>6</sup> By reason of 47 CFR Section 1.955 (3).

<sup>7</sup> See Section 90.155 of the Rules.

<sup>8</sup> Charles ("Chuck") Wells is president and a director of Mobile UHF, Inc., Mobile Radio Service, Inc., and is a manager of MWS Communications, LLC.

radios.<sup>9</sup> This customer therefore discontinued operation under its call sign, WSD94, and began operation on Mobile UHF's private carrier repeater, and subsequently operated thereafter under the call sign of the private carrier, which was WIJ759.

Therefore, when the community repeater shut down, and WSD94 operations permanently shut down, the license became void automatically.<sup>10</sup> Because it automatically canceled, on discontinuance of its operations, **the WSD94 license could not have been revived under any circumstances.**<sup>11</sup> In any event, it would have automatically canceled one year from the shut down of the community repeater.<sup>12</sup> This is competent, first hand evidence, that the license now held by MRA had not existed for about seven years when MRA filed its pleading.

**2. WIJ226 -- This station permanently discontinued operations in 1993, and its license thereby automatically canceled at that time. Evidence exists that MRA had actual knowledge of this fact.**

The facts regarding same have been filed with the Commission, in a "Petition for Enforcement", filed, under oath, by Mr. James A. Kay, Jr., another licensee. The narrative and declaration of James A. Kay, Jr., which outlines the fraudulent behavior of MRA is attached to this pleading as Exhibit "C."<sup>13</sup> Furthermore, see the Supplement

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<sup>9</sup> Tone 5A

<sup>10</sup> J. Schwartzman & Supply subsequently stopped using the private carrier, and has not operated on the channel for many years. Mr. Wells knows this, because he has monitored the traffic on the channel in question, for years, and has knowledge that they discontinued their operations.

<sup>11</sup> See the Rules and the analysis set forth in the previous paragraph and footnote. As set forth above, the non operation of this station would also have resulted in a presumption, one year later, that the station had permanently discontinued operations.

<sup>12</sup> See authority cited, *supra*.

<sup>13</sup> See pages 3 to 5 of the Petition for Enforcement of James A. Kay, Jr.

to the Petition for Enforcement, filed by James A. Kay, Jr., also attached as Exhibit "D", wherein it is made clear that Mark Abrams, partner of MRA, knew that this license was void, years before MRA purchased same.<sup>14</sup> These documents state that WIJ226 was held by El Redondo Termite Control, and like J. Schwartzman & Supply, *supra*, was originally a customer of Motorola on a community repeater. This community repeater was purchased by James A. Kay, Jr., dba Luckys Two Way Radio, and was converted to a private carrier in 1993. Mr. Kay states that El Redondo Termite executed an FCC Form 405A for that purpose, on or about December 8, 1993. This customer therefore ceased operation on this station in 1993, and had requested cancellation of its license.

These extremely similar facts show a pattern and practice by MRA and Mark Abrams. They show a wilful and knowing attempt to mislead the Commission as to the true facts.

**C. MRA has no standing to complain on behalf of any other allegedly "co-channel" licensees.** MRA has not alleged that it represents the interest of any party other than itself, nor can it. MRA claims that the AAA Coordinator did not take into account the rights of certain co-channel licensees or adjacent channel licenses. MRA has listed a table (Exhibit A to the Request for Revocation) of allegedly affected licensees, however, **none of these licensees have filed any pleadings with the Commission regarding this case**, nor has MRA filed any papers with the Commission executed by these licensees authorizing MRA to either represent their interests in this matter or to make them complainants.<sup>15</sup> Indeed, the main licensee on the table is MWS. According to MRA's absurd arguments, MWS is interfering with itself!

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<sup>14</sup> This Supplement is also attached as an Exhibit.

<sup>15</sup> MWS has had no interference complaints directed to it. Nevertheless, MWS points out that other licensees on MRA's so called "table" were either off the air, or located in areas where there would be no interference. For example, Garcia is shielded by mountains, and cannot possibly face interference. There is no evidence that the AAA Coordination has resulted in injury to anyone.